

JUSTIN X. WANG (CSB #166183)
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 San Francisco, California 94111
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Attorney for Plaintiffs
 Stephen CHANG,
 and Hongyan CHEN

E-filing

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

SBA

Stephen CHANG,
 and Hongyan CHEN

Plaintiffs

vs.

MICHAEL CHERTOFF, Secretary of the
 Department of Homeland Security;
 ROBERT S. MUELLER, Director of Federal
 Bureau of Investigation

Defendants.

Case No.:

**COMPLAINT FOR WRIT IN THE
 NATURE OF MANDAMUS**

"Immigration Case"

Plaintiffs Stephen CHANG and Hongyan CHEN by and through their undersigned attorney, sue Defendants and states as follows:

1. This action is brought against the Defendants to compel action on the Petition for Alien Relative, or Form I-130, filed by Plaintiff Stephen CHANG, U.S. citizen, on behalf of his alien wife, Plaintiff Hongyan CHEN, and on the application to Adjust to Permanent Resident Status, or Form I-485, by Plaintiff Hongyan CHEN, based on Plaintiff Hongyan CHEN's marriage to Plaintiff Stephen CHANG, properly filed by the Plaintiffs. The I-130 petition and I-485 application remain within the jurisdiction of the Defendants, who have improperly withheld action on said applications to Plaintiffs' detriments.

PARTIES

2. Plaintiff Stephen CHANG is a 70 years old native of Taiwan and a citizen of the United States. He filed a Form I-130, Petition for Alien Relative, on February 1, 2006 on behalf of

1 Plaintiff Hongyan CHEN, his alien wife (**Exhibit 1: Notice of Receipt for I-130**). Plaintiff
2 Hongyan CHEN is a native and citizen of the People's Republic of China. Her Form I-485,
3 Application to Register Permanent Resident or Adjust Status was received by the U.S.C.I.S. on
4 February 1, 2006 (**Exhibit 2: Notice of Receipt for I-485**) and is seeking to become lawful
5 permanent resident of the United States as beneficiary of the Form I-130 petition filed by Plaintiff
6 Stephen CHANG.

7 3. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security
8 (DHS), and this action is brought against him in his official capacity. He is generally charged
9 with enforcement of the Immigration and Nationality Act, and is further authorized to delegate
10 such powers and authority to subordinate employees of the DHS 8 U.S.C. 1103(a); 8 C.F.R. 2.1.

11 4. Defendant Robert S. Mueller, III, is Director of the Federal Bureau of Investigations (FBI),
12 the law enforcement agency that conducts security clearances for other U.S. government agencies,
13 such as the Department of State. As will be shown, Defendant has failed to complete the security
14 clearances on Plaintiff's case.

15 JURISDICTION

16 5. Jurisdiction in this case is proper under 28 USC §§1331 and 1361, 5 USC §701 *et seq.*,
17 and 28 USC §2201 *et seq.* Relief is requested pursuant to said statutes.

18 VENUE

19 6. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action
20 against officers and agencies of the United States in their official capacities, brought in the
21 District where the Plaintiffs reside if no real property is involved in the action.

22 EXHAUSTION OF REMEDIES

23 7. Plaintiffs have exhausted their administrative remedies.

24 CAUSE OF ACTION

25 8. Plaintiff Stephen CHANG is a native of Taiwan and a citizen of the United States.
26 He filed a Form I-130, Petition for Alien Relative, on behalf of Plaintiff Hongyan CHEN, his alien
27 wife (**Exhibit 1: Notice of Receipt for I-130**). Plaintiff Hongyan CHEN is a native and citizen of
28 the People's Republic of China. Her Form I-485, Application to Register Permanent Resident or

1 Adjust Status was received by the U.S.C.I.S. on February 1, 2006 (**Exhibit 2: Notice of Receipt**
2 **of I-485**). Plaintiffs Stephen CHANG and Hongyan CHEN had their interview on May 17, 2006
3 at the San Francisco District Office and was informed on the date of the interview that their case
4 was pending security clearance, further review and additional documents (**Exhibit 3: Letter from**
5 **CIS**). In early June, 2006, Plaintiffs submitted the requested additional documents.

6 9. According to the Service Center processing dates, the USCIS San Francisco Office is
7 currently processing I-485 adjustment application filed on December 14, 2006 (**Exhibit 4: Copy**
8 **of San Francisco CA Processing Dates Posted on June 15, 2007**). Plaintiff Stephen CHANG's
9 I-130 and Plaintiff Hongyan CHEN's I-485 application have now remained pending for over 17
10 months from the date of the filing.

11 10. Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in accordance
12 with the law. Defendants unreasonably have delayed in and have refused to adjudicate Plaintiff's
13 I-485 application for over 17 months from the date of filing, thereby depriving them of the rights
14 to the decision on their applications and the peace of mind to which Plaintiffs are entitled.

15 11. Plaintiffs have been damaged by the failure of Defendants to act in accord with their duties
16 under the law.

17 (a) Plaintiff Stephen CHANG has been damaged, due to his advanced age, by simply
18 being deprived of the adjudication of his Form I-130, Petition for Alien Relative,
19 for over 17 months.

20 (b) Plaintiff Hongyan CHEN has been damaged by simply being deprived of the
21 adjudication of her Application to Adjust to Permanent Resident Status for over 17
22 months. Plaintiff has also been unable to plan any foreign travel or pursue a future
23 course of action in the United States due to the pendency of her I-485 application.

24 (c) Plaintiff Hongyan CHEN has been damaged in that her employment authorization
25 is tied to her status as applicant for permanent residency, and is limited to
26 increments not to exceed one year. 8 CFR §274a.12(c)(9). Therefore, Plaintiff has
27 been forced to reapply and pay for extensions of employment authorization to the
28 continued inconvenience and harassment of Plaintiff to continually insure her work

eligibility.

- (d) Plaintiff Hongyan CHEN has been further damaged in that her naturalization application, for which she is eligible to apply three years after she receives her Permanent Resident status, has now been delayed due to the pendency of her I-485 application.

12. The Defendants, in violation of the Administrative Procedures Act and Mandamus Act, 5 USC §701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiffs' I-485 applications and have failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiffs' cases.


PRAYER

13. WHEREFORE, in view of the arguments and authority noted herein, Plaintiffs respectfully pray that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:

- (a) requiring Defendants to expeditiously complete Plaintiff Hongyan CHEN's FBI Security Check for her I-485 application, if security check is the only reason for the delay;
- (b) requiring Defendants to expeditiously process Plaintiff's I-485 Application to conclusion;
- (c) awarding Plaintiffs reasonable attorney's fees under the Equal Access to Justice Act; and
- (d) granting such other relief at law and in equity as justice may require.

Dated: July 9, 2007

Respectfully submitted,


Justin X. WANG, Esq.
Attorney for Plaintiff

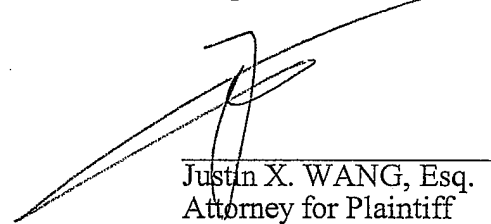
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CERTIFICATION OF INTERESTED ENTITIES OR PERSON

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: July 9, 2007

Respectfully submitted,



Justin X. WANG, Esq.
Attorney for Plaintiff

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LIST OF ATTACHMENTS

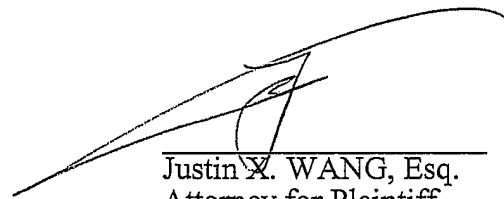
<i>Exhibit</i>	<i>Description</i>
1	Notice of Receipt for I-130
2	Notice of Receipt for I-485
3	Letter from CIS
4	Copy of San Francisco CA Processing Dates Posted on June 15, 2007

CERTIFICATION OF INTERESTED ENTITIES OR PERSON

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: July 9, 2007

Respectfully submitted,


Justin X. WANG, Esq.
Attorney for Plaintiff

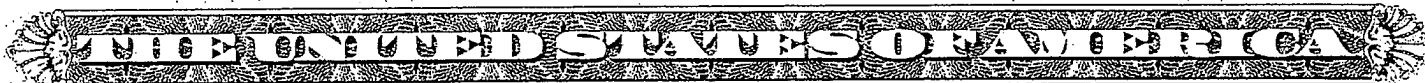
LIST OF ATTACHMENTS

<i>Exhibit</i>	<i>Description</i>
1	Notice of Receipt for I-130
2	Notice of Receipt for I-485
3	Letter from CIS
4	Copy of San Francisco CA Processing Dates Posted on June 15, 2007

Ex. 1

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797C, Notice of Action



Receipt Number: MSC-06-125-15467		Case Type: I-130 - Petition for Alien Relative	
Received Date: February 01, 2006	Priority Date:	Petitioner: A020023687 CHANG, STEPHEN	
Notice Date: February 06, 2006	Page 1 OF 1	Beneficiary: CHEN, HONGYAN	

STEPHEN CHANG
2139 NAPA STREET
RICHMOND CA 94804

Notice Type:	Receipt Notice
Amount Received:	\$190.00

The above application/petition has been received. Please notify us immediately if any of the above information is incorrect. Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

If you have questions, you may call the BCIS National Customer Service Center at 1-800-375-5283. For TDD hearing impaired assistance, please call 1-800-767-1833.

If you have Internet access, you can visit the Bureau of Citizenship and Immigration Services website at www.BCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U.S. BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES
P.O. Box 648005

Ex. 2

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797C, Notice of Action



Receipt Number: MSC-06-125-15465		Case Type: I-485 - Application to Register Permanent Residence or Adjust Status
Received Date: February 01, 2006	Priority Date:	Applicant: A096737192 CHEN, HONGYAN
Notice Date: February 06, 2006	Page 1 OF 1	ASC Code: 3

HONGYAN CHEN 2139 NAPA STREET RICHMOND, CA 94804	Notice Type: Receipt Notice Amount Received: \$395.00
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The above application has been received. Please notify us immediately if any of the above information is incorrect. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

BIOMETRICS-

The next step is to have your biometrics taken, if required, at a US Citizenship and Immigration Services (USCIS) Application Support Center (ASC).

PLEASE NOTE-

USCIS WILL SCHEDULE YOUR BIOMETRICS APPOINTMENT. You will be receiving an appointment notice with a specific time, date and place where you will have your fingerprints and/or photos taken.

WHAT TO BRING TO Your appointment -

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

If you do not bring this letter and photo identification, we cannot process you.

Please bring a copy of all receipt notices received from USCIS in relation to your current application for benefits.

CASE STATUS -

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the United States Citizenship and Immigration Services website at www.USCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U. S. Citizenship and Immigration Services
P.O. Box 648005
Lee's Summit, MO 64064



Ex. 3

U.S. Department of Homeland Security
San Francisco, CA 94111



U.S. Citizenship
and Immigration
Services

HONGYAN CHEN

A 96 737 192

E-11(X)

x HAND-DELIVERED to applicant

5/17/2006

Copy to: Cindy S. Yau, Esq.

THIS LETTER IS IN REFERENCE TO YOUR APPLICATION FOR PERMANENT RESIDENCE.
YOUR CASE HAS BEEN CONTINUED FOR THE REASON(S) CHECKED BELOW.

1. ☐ Visa Availability ☐ Fingerprints ☒ Security Clearance(s) ☐ A-file(s) ☒ Further Review
☒ Documentation (listed below) ☐ Other:

IT IS REQUESTED THAT YOU SUBMIT THE FOLLOWING DOCUMENTS:

- (1) Please provide photocopy of the booklet issued by the province's health department reflecting your name, gender, DOB, and your parents' names. **Note:** Notarial birth certificate cannot be used alone as a primary evidence. Hence, secondary evidence (i.e. old land deeds and old family register; Household (AHR) or Village Registry; school and medical records) must be submitted in conjunction with a notarial birth certificate.
- (2) Please provide copy of the booklet (photocopy) issued by the appropriate civil authority reflecting the name of the divorced parties, the date of divorce, the registration number, and the date of issue. In addition, the booklet must indicate that the divorce was in accordance with the Divorce Law of the People's Republic of China; and the Household Registry (photocopy) reflecting the entry.
- (3) Please provide copy or printout of your record from the Department of Motor Vehicles (DMV). You must also provide copy or printout of your husband's DMV record.
- (4) Please provide copy of your school transcript of records form

You are advised that you are granted a period of ninety (90) days from the date of this letter to submit the requested documents. Please note that you may submit the documents at any time prior to that 90-day deadline. You may submit the documents in person by scheduling an Infopass appointment via the Internet at our web address <http://infopass.uscis.gov/> or you may mail the documents to the following address:

Citizenship and Immigration Service
630 Sansome Street, AOS Unit
San Francisco, CA 94111

FAILURE TO COMPLY WITH THIS REQUEST WILL BE DEEMED GROUNDS FOR DENIAL OF YOUR APPLICATION FOR LACK OF PROSECUTION.

Sincerely,

David N. Still
District Director

Ex. 4

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U.S. Citizenship and Immigration Services San Francisco CA Processing Dates Posted June 15, 2007

Notice: U.S. Citizenship and Immigration Services (USCIS) has improved the reporting procedure for processing times of immigration benefit applications. In the past, USCIS benefit processing reports indicated the specific type of applications or petitions that were being processed and the date the cases were received. However, the date the case was received did not provide a clear indication of when USCIS expected to complete the case, nor did it provide a clear indication of USCIS' commitment to process cases within a certain cycle time. It also did not align with the processing times and cycle times the agency reports in other contexts.

This improved reporting procedure is an effort to give our customers more accurate information that better reflects current processing time and USCIS service level commitments. Effective immediately, when we are completing applications and petitions within our service level goals we will report that as the processing time. For example, when our service level goal is to process a particular kind of case within six months, and if our processing time is six months or less, we will show a date consistent with our service level goal because that reflects our commitment.

When we are not meeting our service level goal, the date posted will reflect the filing date of cases that are being completed. It should be noted that while in some instances reported processing dates may appear to have regressed due to this change, they do not reflect a lengthening of USCIS processing times, but simply the change in reporting. Our goal is to provide accurate projections and thus give customers clear expectations as to what they can expect as a processing time.

There are several important exceptions to the processing times shown below:

- Case processing will be delayed if we must ask you for more evidence or information.
If we ask for missing required initial evidence, count the processing time from when we receive that missing evidence.
- The case processing timeframe will start over if a customer doesn't appear for an interview or asks that it be rescheduled.

What if I have a problem or have questions about a case?

We offer a variety of services after you file. For example, for most kinds of cases you can [check the status of your case online](#).

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our fact sheet –

[Case Services - How do I... know what kind of services are available to me after I file my application or petition?](#)

One additional point about these projections. They are the time to complete processing and mail the actual notice and/or document. If you check case status online and see that your case has been approved, and you haven't yet received your approval notice or document in the mail, we ask that you wait thirty days from the approval date before contacting us. That is because it may take that long before it is returned to us as undeliverable. You can also print the case status online answer

for your records.

District Office Processing Dates for **San Francisco CA** Posted June 15, 2007

Form	Form Name	Now Processing Cases with Receipt Notice Date of:
I-131	Application for Travel Documents	March 15, 2007
I-485	Application to Register Permanent Residence or Adjust Status	December 14, 2006
I-600	Petition to Classify Orphan as an Immediate Relative	February 25, 2007
I-600A	Application for Advance Processing of Orphan Petition	February 25, 2007
I-765	Application for Employment Authorization	March 29, 2007
N-400	Application for Naturalization	November 12, 2006
N-600	Application for Certification of Citizenship	March 15, 2007

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[U.S. Department of Homeland Security](#)